

### ***REMARKS***

In the December 23, 2009 Office Action, claims 1-4 stand rejected in view of prior art. No other objections or rejections were made in the Office Action.

#### ***Status of Claims and Amendments***

In response to the December 23, 2009 Office Action, Applicant has amended claims 1 and 4, as indicated above. Thus, claims 1-4 are pending, with claim 1 being the only independent claim. Reexamination and reconsideration of the pending claims are respectfully requested in view of above amendments and the following comments.

#### ***Election of Species***

In item 1 of the Office Action, Applicant's election without traverse was acknowledged. Thus, non-elected claims 5-17 were withdrawn from further consideration.

#### ***Rejections - 35 U.S.C. § 103***

In item 2 of the Office Action, claims 1-4 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,404,573 (Rub et al.) in view of U.S. Patent No. 5,408,424 (Lo). In response, Applicant has amended independent claim 1, as mentioned above.

More specifically, Applicant has amended independent claim 1 to recite that a code pattern contains predetermined information to be read by the machine, that the code pattern has a shape, a position, a tone, and a brightness, that the code pattern is one dimensional or two dimensional, that the code pattern has dots forming a honey comb shape, and that the shape, position, tone, brightness, or combination thereof varies on the basis of time.

Rub et al. were cited in the Office Action to show an authentication time-variant code wherein shape, position, tone, brightness of code pattern or combination of the shape, position,

tone, brightness of the code pattern vary according to time, and wherein a predetermined information is contained in code pattern variation. Lo was cited in the Office Action to show a discrete-time measurement process for the purpose of estimating a discrete-time signal process. However, Applicant respectfully asserts the claimed invention is not obvious in that neither Rub et al. nor Lo discloses the code pattern that has the dots forming the honey comb shape.

Applicant respectfully asserts that this arrangement is *not* disclosed or suggested by the Rub et al., Lo, or any other prior art of record. Under U.S. patent law, the mere fact that the prior art can be modified does *not* make the modification obvious, unless an *apparent reason* exists based on evidence in the record or scientific reasoning for one of ordinary skill in the art to make the modification. See, *KSR Int'l Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1741 (2007). The KSR Court noted that obviousness cannot be proven merely by showing that the elements of a claimed device were known in the prior art; it must be shown that those of ordinary skill in the art would have had some "apparent reason to combine the known elements in the fashion claimed." *Id.* at 1741. The current record lacks any apparent reason, suggestion or expectation of success for combining the patents to create Applicants' unique arrangement of authentication time-variant code.

Moreover, Applicant believes that dependent claims 2-4 are also allowable over the prior art of record in that they depend from independent claim 1, and therefore are allowable for the reasons stated above. Also, claims 2-4 are further allowable because they include additional limitations. Thus, Applicant believes that since the prior art of record does not disclose or suggest the invention as set forth in independent claim 1, the prior art of record also fails to disclose or suggest the inventions as set forth in the dependent claims.

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Amendment dated March 23, 2009  
Reply to Office Action of December 23, 2008

Therefore, Applicant respectfully requests that the rejections be withdrawn in view of the above comments and amendments.

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In view of the foregoing amendment and comments, Applicant respectfully asserts that claims 1-4 are now in condition for allowance. Reexamination and reconsideration of the pending claims are respectfully requested.

Respectfully submitted,

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